



## DEPARTMENT OF THE ARMY

HEADQUARTERS UNITED STATES ARMY TRAINING AND DOCTRINE COMMAND  
FORT MONROE, VIRGINIA 23651-5000

ATBO-A (715)

REPLY TO  
ATTENTION OF

13 MAR 1998

MEMORANDUM FOR Commanders, TRADOC Installations, ATTN:  
Directors of Contracting

SUBJECT: Inherently Government Functions in TRADOC Directors of Contracting and the Office of Principal Assistant Responsible for Contracting

1. References:

- a. Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, "Inherently Governmental Functions."
- b. Office of Management and Budget Circular A-76.

2. In response to a request from HQDA, the TRADOC Chief of Staff is directing installations to review all positions to identify those appropriate for outsourcing under A-76. As a result, you will be asked to review the directorate of contracting (DOC) operation and identify any positions that could be performed by a contractor. This memorandum provides guidance and establishes TRADOC policy on determining what functions within TRADOC DOCs and the Office of the Principal Assistant Responsible for Contracting (OPARC) are, by their nature, inherently governmental.

3. Recommend you review the OFPP policy letter (ref a) which can be found at the following website: [www.whitehouse.gov/WH/EOP/OMB/html/circulars/a076/a076sa5.html](http://www.whitehouse.gov/WH/EOP/OMB/html/circulars/a076/a076sa5.html). This policy letter provides guidelines that will assist you and other directors in determining whether a particular function is inherently governmental.

4. As a matter of policy, the use of service contracts to perform inherently governmental functions is prohibited since these functions are so intimately related to protecting the public's interests that they can only be performed by government personnel.

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a. In most instances, such functions can be categorized as: (1) functions involving the act of governing, i.e., the discretionary exercise of governmental authority; or (2) functions involving monetary transactions and entitlement.

b. OFPP policy states, in part, that inherently governmental functions involve, among other things, interpretation and execution of the laws of the United States so as to: (1) bind the United States to take or not to take some action by contract, policy, regulation, etc.; (2) determine, protect, and advance the economic, political, territorial, property, or other interests of the United States; or (3) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other federal funds.

5. Actions taken on behalf of the public's business must be taken as a result of informed, independent judgments made by government officials who are ultimately responsible under statute and regulation. Effective and efficient contracting support is critical to supporting accomplishment of the core mission of the command. Therefore, judicious care must be exercised when making decisions on what functions are, or are not, inherently governmental.

a. By definition, contracting offices exist to support the acquisition of needed supplies and services. Warranted contracting officers are empowered to bind the government, and must comply with statutes and regulations that govern the process. Most of the major functions performed within a DOC or OPARC are inherently governmental since they clearly fit within guidance established in the OFPP policy letter.

b. Appendix A to the OFPP policy letter is an illustrative list of functions considered to be inherently governmental. Among the contracting-related functions on this list are those where the person is: determining what supplies or services are to

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be acquired by the government, a voting member of a source selection board, approving any contract documents, awarding contracts, administering contracts, and terminating contracts. These functions are inherently governmental and cannot be accomplished by contractor employees. Consequently, DOC or OPARC positions that are considered inherently governmental include directors, contract specialists, cost/price analysts, procurement analysts, and management analysts directly involved in executing contractual actions, analyzing requirements, developing policy, and measuring contractor performance.

6. Functions within a contracting office are comprised of a series of subordinate and supporting tasks, the majority of which are- inherently governmental because they directly involve discretionary exercise of governmental authority or monetary transactions. However, there may be some other subordinate and supporting tasks which are not necessarily inherently governmental.

a. Appendix B to the OFPP policy letter is a list of services and actions that are not considered to be inherently governmental. Most contracting-related functions on this list are for providing support or assistance, such as those: involved with or related to the evaluation of another contractor's performance, in support of acquisition planning, providing assistance in contract management, providing technical evaluation of contract proposals, providing assistance in developing statements of work, as technical advisors to a source selection board, as a member of source evaluation board, and providing inspection services.

b. Some functions that may be considered for performance by a contractor could include support and peripheral functions such as clerical, administrative, ADPE support, data collection and reporting, contract close-out, etc. Depending upon the particular situation, there may also be instances where it is appropriate to use a contractor for some support functions such as cost/price analysis. An alternative may be to consider using

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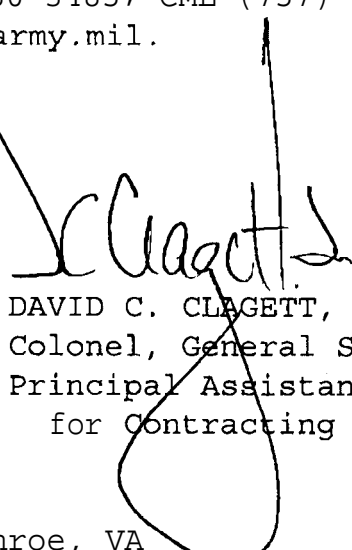
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contractor support for these functions to augment the government work force during peak workload periods.

7. Even though it may be appropriate for some support or assistance to sometimes be provided by a contractor, most tasks performed by contracting offices are interdependent and inextricably linked together. To de-link inherently governmental tasks from those which could be performed by a contractor may not be in the best interests of the government. Clear and convincing evidence that a subordinate task can be de-linked from an inherently governmental function must be present in order to preclude an unacceptable impact on contracting support. Even when a related task or function is determined not to be inherently governmental, it may be extremely difficult to perform the task or function with contractor personnel without creating a personal services relationship between a contractor's employee(s) and the government employee responsible for executing the contracting support mission.

8. If you need assistance in performing this analysis, please contact Don Fitzgerald, DSN 680-3485; CML (757) 727-3485; e-mail [fitzgerd@monroe-emh10.army.mil](mailto:fitzgerd@monroe-emh10.army.mil).

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